Supreme Court, U. S.
FILED
AUG 2 1980
MICHAEL RODAK, JR., CLERK

No 80-204

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

RYDER TRUCK LINES, INC., Petitioner

v.

HARRIS FARMER, Respondent

APPENDIX

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF GEORGIA

GEORGE L. POPE, JR.
771 Spring Street, N.W.
Atlanta, Georgia 30379
(404) 881-0844

Counsel for Petitioner,
Ryder Truck Lines, Inc.

APPENDIX

Ryder Truck Lines v. Harris Farmer

Notice of denial of motion for rehearing,
Supreme Court of Georgia

Decision of Supreme Court of Georgia

Notice granting the writ of certiorari,
Supreme Court of Georgia

Decision of Court of Appeals of Georgia

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

DEAR SIR: ATLANTA 5/7/80

The motion for a rehearing was denied today:

Case No. 35883, Farmer v. Ryder Truck Lines, Inc., et al.

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

In the Supreme Court of Georgia

Decided: 4/22/80

35883. FARMER v. RYDER TRUCK LINES, INC., et al.

HILL, Justice.

Harris Farmer was totally disabled in an accident while driving a truck owned by Dan Martin. Martin owned four trucks which were under an equipment lease to Hames Trucking Company. Mr. Farmer was one of three truck drivers employed by Dan Martin. Martin had no worker's compensation insurance in effect at the time of the accident.

Hames Trucking Company, headquartered in Clayton County, Georgia, is authorized to haul exempt commodities only. Under the terms of the equipment lease with Hames, Martin received 83% of the outbound shipping charge and Martin was entitled to all revenue from return loads that were trip leased to a common regulated carrier. Martin was responsible for finding return loads. Pursuant to the equipment lease, Martin was to furnish at his expense "competent, qualified, licensed and experienced" drivers who were to be the employees of Martin, but Hames reserved the right to request removal of any unqualified driver. Martin was to have exclusive control, direction, jurisdiction and supervision of the drivers, with Hames only having the authority to designate the destination of outgoing loads.

Upon delivering a load of exempt poultry to Chicago for Hames Trucking Company, Farmer went to Ryder Truck Lines, Inc., in Chicago and obtained a load of regulated commodities for a return haul to Georgia. Farmer signed a trip lease agreement as agent of the lessor (stipulated by the parties to be Martin).

Under the terms of the trip lease agreement, the lessor (Martin) leased the tractor and trailer to Ryder under the

"direction and control of Ryder Truck Lines, Inc." The tractor and trailer were under the "exclusive possession, control, and use" of Ryder, who assumed "full responsibility in respect to the equipment it is operating to the public, the shippers, and all regulatory bodies having jurisdiction." The lessor was to pay the driver's salary and indemnify Ryder against any loss resulting from the injury or death of the driver. Ryder retained authority to transfer the shipment and handle it according to its best judgment if Ryder deemed that the equipment was inadequate for any reason.

Farmer was injured while driving the tractor leased to Ryder. After the accident, Farmer filed a worker's compensation claim against Ryder and Hames Trucking Company. The administrative law judge found as a matter of fact that Ryder Truck Lines and Hames Trucking Company were Farmer's employers at the time of the accident. He found that Ryder had the right to and was legally required to maintain control over the truck and driver under the trip lease agreement and under Interstate Commerce Commission regulations. He further found that Hames Trucking Company maintained control of the truck and in so doing necessarily maintained control of the driver with respect to the outgoing trip. He held that the picking up of return loads was part and parcel of the equipment lease entered into between Hames Trucking Company and Martin. In return hauls, Martin was lowering the cost to Hames of the outbound loads by not returning empty, and thus the return haul was of monetary benefit to Hames Trucking Company. The administrative law judge found that at the time of the accident the truck was being returned to Hames and held that under the provisions of our worker's compensation laws, the employer, Hames, could not send an employee to a distant location and then deny any responsibility for his return. He awarded Harris $95 per week for the period of his incapacity.

Upon de novo review, the worker's compensation board reversed the award. The board found that Farmer had been operating the truck under the general supervision of Dan Martin. It found no employee-employer relationship existed

between Farmer and Ryder Truck Lines, Inc., or Hames Trucking Company. The board held that the proper test to be applied in determining the existence of an employee-employer relationship is "whether the alleged employer had the right to control the time, manner, and method of performance of the alleged employee's work duties, or whether the alleged employer assumed such control, regardless of whether he had the right to do so." The board found that Hames Trucking Company neither had the right to nor exercised any control over Farmer on his return trip to Georgia. The board further found that testimony of Ryder's representative clearly indicated that the language in the trip lease giving Ryder the right to control the tractor and trailer referred to results to be accomplished and was never understood to give Ryder the right to control Farmer as to the time, manner, and method of his driving to Georgia.1/ Consequently, the board reversed the administrative law judge (one director dissenting) and denied relief.

On appeal, the superior court affirmed. In a full court opinion, the Court of Appeals affirmed, with two judges dissenting. *Farmer v. Employers Insurance of Wausau*, 152 Ga. App. 608 (SE2d) (1979). The majority divided the right of control into two dimensions, "ministerial control" and "operational control." Ministerial control, reasoned the Court of Appeals, was control over the driver, and operational control was control over the equipment required by federal law and exercised by Ryder for the protection of the freight and the public. The Court of Appeals found that the driver and his expenses were paid by Martin and that Ryder could not hire or replace the driver.

One of our concerns in granting certiorari was the possible applicability of the "statutory employer" provision of our worker's compensation law, Code Ann. section 114-112, in light of *Holt v. Travelers Ins. Co.*, 224 Ga. 857 (SE2d) (1979).

/1/ Ryder's representative testified , inter alia, that during the trip lease, Farmer was under the direction and control of Ryder.

That Code section is inapplicable here for the reason that no claim for compensation was first instituted against the immediate employer, Martin, as required by that section. We are now concerned with whether the concept of ministerial and operational control should be introduced into our worker's compensation law.2/

The name of the case has been changed from *Farmer v. Employers Insurance of Wausau, et al.*, as it was in the Court of Appeals, to *Farmer v. Ryder Truck Lines, Inc.*, to more accurately reflect the issue in the case. Employers Insurance of Wausau insured Hames Trucking Company and we affirm the judgment of the Court of Appeals insofar as it held that Hames Trucking Company was not Farmer's employer at the time of the accident.

Regulations of the Interstate Commerce Commission require authorized carriers who lease equipment with drivers from

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/2/ At common law, a master was and is liable for torts committed by his or her servant in the execution of the master's business and within the scope of the employment. 20 E.G.L. Master and Servant section 32. A master is one who employs another to perform services and who controls or has the right to control the physical conduct of the person employed in the performance of those services. 20 E.G.L. Master and Servant section 2.

When our worker's compensation law was enacted, we adopted from the laws governing vicarious liability the control test for determining worker's compensation coverage. 29 E.G.L. Worker's Compensation section 18. "In determining whether or not the relationship of master and servant prevails in a compensation case, the same principles that exist under the common law obtain." *Travelers Insurance Co. v. Clark*, 58 Ga. App. 115, 121 (197 SE 650) (1938). Hence, when we define which persons are employees for worker's compensation purposes, we may at the same time be defining which persons are servants for tort liability purposes.

Thus, when Ryder accepted full responsibility to the public in respect to the equipment it was operating, it accepted at least partial responsibility for Farmer's negligent injury, if any, to a member of the motoring public. See Walter v. Dunlap, 368 F2d 118 (3rd Cir. 1966).

owners to issue receipts identifying the equipment, and specifying the date and time on which the lease begins and when it ends. The lease must provide that the lessee have exclusive possession, control, and use of the equipment for the duration of the lease, and that the lessee assume complete responsibility for the operation of the equipment for the duration of the lease.[3]

It may be argued that Farmer was an independent contractor as to Ryder, in that Ryder had only the right to require certain results in conformity with the contract and that Ryder did not have the right to control the time, manner and method of executing the work. Because there was no direct contract between Ryder and Farmer, their relationship to each other must be ascertained from the trip lease agreement between Ryder and Martin.

Under the trip lease in question the tractor and trailer were under the direction and control of Ryder.[4] The driver went with the equipment. Ryder controlled the delivery of the goods. Ryder told Farmer where and when to pick up the load. Farmer was allowed to choose which of the ICC approved routes he would travel but Ryder then adopted that route and told Farmer not to deviate from it. Ryder told Farmer where and when to deliver the load. These are pertinent factors to be considered in determining whether Ryder had control over Farmer as to the return trip.

In *Ratliff v. Liberty Mutual Ins. Co.*, 149 Ga. App. 211 (253 SE2d 799) (1979), the court found the driver of a leased

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/3/ See generally 49 CFR sections 1057.11, 1057.12, formerly 49 CFR section 1057.4. Pursuant to 49 USCA section 304(e), the ICC is authorized to prescribe such regulations governing motor carriers using non-owned vehicles as necessary to assure that such carriers will have full direction and control of such vehicles and will be responsible for the operation thereof as if they were the owners.

/4/ The lease involved in *Montgomery Trucking Co. v. Black*, 231 Ga. 211 (200 SE2d 882) (1973), was not subject to, or did not comply with, the ICC regulations applicable here.

tractor to be an employee of the lessee for worker's compensation purposes notwithstanding the fact that the "employer" leased the rig rather than owned it.

Ryder argues that it did not hire and could not fire Farmer. However, it could have declined to enter into this trip lease with Farmer as driver, and it could terminate the haul by transferring the shipment if it deemed the equipment to be inadequate for any reason. It is true that it was Martin who actually hired, paid and could fire Farmer. Ryder on the other hand could effectively do much the same thing and it controlled the details of the loading, the route and the unloading of the shipment even to the exclusion of Martin.

"Under general legal principles, it is well settled that the fact that an employee is the general servant of one employer does not prevent him from becoming the particular servant of another under special circumstances, and it is true, as a general proposition, that when one person lends or hires his servant to another for a particular employment, the servant, as to anything done in such employment, must be dealt with as the servant of the person to whom he is lent or hired, although he remains the general servant of the other person. In actions at common law, to recover damages alleged to have been caused by the servant of the defendant, the criterion by which to determine whether the relation existed as alleged is to ascertain whether, at the time of the injury, the alleged servant was subject to the defendant's orders and control and was liable to be discharged by him for disobedience to orders or for misconduct. [Citations omitted.] The same rules have been held to be applicable in determining the existence or non-existence of the relation of employer and employee in cases arising under compensation acts." *United States Fidelity and Guaranty Co., et al. v. Stapleton, et al.*, 37 Ga. App. 707, 710 (141 SE 506) (1928). The *Stapleton* case, supra, involved the driver of a truck leased to a construction company. There it was held that the construction company was the employer of the borrowed servant for worker's compensation purposes notwithstanding the fact that the driver's wages were not paid to him

directly from the construction company.

Ryder argues that the better reasoned view is expressed in Tretter v. Dart Transit Co., 135 NW2d 484 (271 Minn. 131) (1965). There the owner leased his tractor to be driven by himself to a certified common carrier pursuant to a one year lease containing control provisions similar to the trip lease involved here. The driver died in an accident and the Minnesota Supreme Court denied his widow's claim for worker's compensation. The fact that the driver was the lessor-owner of the tractor makes that case different from this one insofar as the loaned servant doctrine is concerned. Moreover, the Minnesota court acknowledged that the ICC regulations, as drawn, do not mandate that a driver of a leased vehicle be, or negate that the driver is, the employee of the lessee.

The decision of the United States Supreme Court on which the Court of Appeals relied for the distinction between ministerial and operational control, Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc., 423 U.S. 28 (96 SC 229, 46 LE2d 169) (1975), involved the validity of an indemnification provision in a trip lease, in view of the ICC regulations and as against a public policy challenge, whereby the lessor agreed to indemnify the lessee for claims arising out of the lessor's negligence. The Supreme Court upheld the validity of the indemnification provision. In passing, the Court observed that the lessor's furnishing of the driver allows "an aspect of control, in a sense, to remain in the lessor" (423 U.S. at 39). The Court described the lessor's control over the driver as ministerial and the lessee's control as "operating authority" and "that *ultimate control* in the lessee which makes and keeps it responsible to the public, the shipper, and the Commission" (423 U.S. at 39, emphasis supplied). Thus, the Supreme Court considered the lessee's control to predominate over the lessor's.

In White v. Excalibur Ins. Co., 599 F2d 50 (5th Cir. 1979), Crawford leased his trucks with drivers to Superior Trucking Co., an ICC motor carrier. One of these drivers was killed. His mother sued Superior in tort and then sued Superior's insurance company on the judgment in district court. The circuit court

held that the deceased was an employee of Superior within the meaning of 49 USC section 304(e), supra, and that as the employer, Superior was immune to suit in tort but was subject to Georgia's worker's compensation act. Construing federal law, the court said (599 F2d at 54): "Because Congress has created the statutory employee status, and, as we have concluded, the carrier-lessee is deemed an 'employer' for purposes of the Georgia Workmen's Compensation Law, the Georgia cases dealing with independent contractors are not applicable."

We find that the Court of Appeals erred insofar as Ryder Truck Lines, Inc., is concerned in dividing control into two parts for worker's compensation purposes. We find further that the Worker's Compensation Board erred in failing to recognize the right of control given Ryder in the trip lease, as opposed to the testimony of Ryder's representative interpreting that lease contrary to its terms.

On the other hand, the terms of the equipment lease between Martin and Hames Trucking Company clearly show that Hames Trucking Company exercised no control over Martin's drivers regarding return hauls of regulated commodities and Hames Trucking Company thus was not an employer of Farmer at the time of the accident.

Judgment affirmed in part, reversed in part. All the Justices concur, except Jordon, P.J., who concurs in the Judgment only.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

ATLANTA January 9, 1980

Dear Sir:

Case No. 35883. HARRIS FARMER V. EMPLOYERS INSURANCE OF WAUSAU ET AL.

The Supreme Court today GRANTED the writ of certiorari in this case. All the Justices concur, except Jordan, Bowles and Marshall, J. J., who dissent.

THIS CASE WILL BE ASSIGNED TO THE MARCH 1980, ORAL ARGUMENT CALENDAR.

The Court is particularly concerned with the following: The applicability to this case of the "statutory employer" provision (Code Ann. section 114-112) in light of *Holt v. Travelers Insurance Company*, Case No. 35094, decided 12-05-79.

Briefs filed in the Court of Appeals are included in the record presented to this court. Additional briefs are not required but may be submitted.

Very truly yours,

Mrs. Joline B. Williams, Clerk

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57856. FARMER v. EMPLOYERS INSURANCE OF WAUSAU, et al.

UNDERWOOD, Judge.

In this workers' compensation proceeding it was determined that claimant suffered compensable injuries arising out of and in the course of his employment as a truck driver with Ryder Truck Lines, Inc. and Hames Trucking Company. On appeal to the full board, and upon de novo consideration of all the evidence, the board determined, with one director dissenting, that "Hames Trucking Company neither had the right to nor exercised any control over claimant in reference to his trip back into Georgia . . ." The board also determined that the language of the "trip lease" entered into by Ryder and Dan Martin, the owner of the tractor in question, refers to results to be accomplished and was "never understood to give Ryder the right to control claimant as to the time, manner, and method of his driving their trailer to Georgia." The board then concluded that "no employer-employee relation existed between claimant" and the two trucking concerns, and the claim was denied. On appeal to the superior court the denial was affirmed. Claimant appeals; we likewise affirm.

As noted above, the tractor which claimant was driving was owned by Dan Martin, who leased considerable trucking equipment (tractors and trailers) to Hames Trucking, Inc. The agreement between Martin and Hames as to the leased equipment provided that return loads "from without the State of Georgia to some destination within the State of Georgia" were the "sole responsibility of [Martin] who shall be entitled to all revenue for loads that are trip leased to a common regulated carrier." The contract called for Martin "to furnish at his expense, competent, qualified, licensed and experienced operators to operate said leased equipment" who were to be the employees of Martin, and he was to be solely responsible for

the "compensation, selection, supervision and control of said operators," although Hames would have the right to request Martin to replace any operator who "may not be qualified." Another provision of the lease stated that "the operators of said equipment shall be under the exclusive control, direction, jurisdiction and supervision of [Martin]. [Hames] shall only have the authority to designate the destination of outgoing loads."

The record reveals that the claimant driver hauled for Martin a load of poultry from Georgia to Chicago. As is common practice, the driver then located a regulated carrier, Ryder, which had a trailer that needed to be delivered to Georgia on the return trip. The driver, representing Martin, signed as agreement with Ryder, referred to as a "one-way trip lease," providing for the transportation of goods in interstate commerce "under the direction and control of Ryder Truck Lines, Inc." The lease stated that "the leased equipment under this agreement is in the exclusive possession, control, and use of the authorized Lessee [Ryder] and that the Lessee assumes full responsibility in respect to the equipment it is operating to the public, the shippers, and all regulatory bodies having jurisdiction. It is agreed that Lessor [Martin] will carry acceptable Public Liability and Property Damage Insurance." It further provided that Martin was responsible for the maintenance of the tractor, payment of the driver and payment for any citations or fines received by him.

During the return trip from Chicago an accident occurred in which the driver received permanent injuries. He subsequently filed this claim seeking workers' compensation contending he was an employee of Ryder and Hames at the time of the accident.

1. The issue in this case is whether the "control" provisions of a "trip lease" agreement, pursuant to which the owner of a tractor unit leases such unit to a regulated carrier for a single trip to deliver a single trailer of freight, makes the driver an employee of the regulated carrier for purposes of determining workers' compensation coverage. It is urged that because applicable federal legislation, 49 U.S.C.A. section 304, requires

that the equipment in a trip lease arrangement be under the control of the regulated carrier, the driver becomes an employee of the regulated carrier for the term of the lease, i.e., during the one-way trip.

This, we believe, is an unnecessarily narrow, one-dimensional test for determining whether there exists an employee-employer relationship and ignores some practical aspects of a trip-lease transaction. It also goes beyond the public purpose which Congress sought to serve in mandating that the regulated carrier exercise "control" in a trip-lease situation. The United States Supreme Court, while not addressing the question presented in this case, has dealt with the background and purpose of the "control and responsibility" provisions of 49 U.S.C.A. section 304 in Transamerican Freight v. Brada Miller Freight Systems, 423 U.S. 28 (1975). In that case the Court recognized the distinction between operational control concerning the equipment and other aspects of the shipment and ministerial control concerning the driver. "It is to be acknowledged, to be sure, that the lessor's furnishing of a driver allows an aspect of control, in a sense, to remain in the lessor. But this is ministerial control, not control of the kind with which the Commission was concerned [in promulgating regulations under the legislation] . . . Its concern . . . was with operating authority, with routes and destinations and classes of freight, with the integrity of certifications, and with that ultimate control in the lessee that makes and keeps it responsible to the public, the shipper, and the Commission." Transamerican Freight v. Brada Miller Freight Systems, supra, at p. 39.

Our conclusion is that the "control" provisions which were included in the written lease pertaining to this "trip lease" were mandated by Congress to make the regulated carrier responsible for damages to the freight during shipment and to provide other protections to the public whom the carrier has been authorized to serve. We can find no persuasive indication that these provisions were intended to affect the "ministerial" aspects of the relationship between the lessor and the driver, or to make the driver an employee of the regulated carrier. Ryder could not

fire the driver or replace him with another driver. The driver was paid by Martin who also paid for all expenses of the trip. The nature of the relationship between the claimant and Ryder does not satisfy our prior standards for finding an employment relationship. *Sanders Truck Co. v. Napeier*, 117 Ga. App. 561 (161 SE2d 490) (1968); *Pilcher v. Wise Electric Co.*, 129 Ga. App. 92 (198 SE2d 713) (1975).

2. As Hames was clearly not claimant's employer with respect to this occurrence, the board properly denied compensation as to it.

Judgment affirmed. Deen, C. J., Quillian, P. J., Smith, Shulman, Birdsong and Carley, J. J., concur. McMurray, P. J., and Banke, J., dissent.

57856. FARMER v. EMPLOYERS INSURANCE OF WAUSAU, et al.

McMURRAY, Presiding Judge, dissenting.

This is a workers' compensation case in which claimant was a truck driver injured in a highway collision while in the course of his employment. He was driving a tractor trailer in which he was transporting goods in interstate commerce. Without doubt he was the employee of someone.

The issue here is to determine which of three concerns were his employer or employers. The truck which he was driving was owned by Dan Martin who leased considerable trucking equipment (tractors and trailers) to Hames Trucking, Inc. The lease agreement as to the tractor in question which claimant was driving was executed by "Hames Trucking, Inc.," by C. Scott Hames, Lessee. It involved shipment of goods known as "outgoing loads." With reference to return loads "from without the State of Georgia to some destination within the State of Georgia," this became the "sole responsibility of Lessor who shall be entitled to all revenue for loads that are trip leased to a common regulated carrier." If there were return loads of exempt commodities, same were to be in the name of "Hames Trucking, Inc." and covered by liability and cargo insurance only when lessee was notified in advance of shipment with cost to lessee. This contract called for the lessor "to furnish at his expense, competent, qualified, licensed and experienced operators to operate said leased equipment." Said operators were to be the employees, agents and/or servants of the lessor who was to be solely responsible for the "compensation, selection, supervision and control of said operators," although the lessee would have the right to request the lessor to replace any operator "which may not be qualified." Another division of that lease stated unequivocally that, "the operators of said equipment shall be under the exclusive control, direction, jurisdiction and supervision of Lessor. Lessee shall only have the authority to designate the destination of outgoing loads."

However, at the time in question when the driver was injured he had transported for Hames Trucking, Inc. a load of "exempt commodities" (chickens) from metropolitan Atlanta to Chicago. A contract was then executed with Ryder Truck Lines, Inc., as lessee, and "Hames Trucking Co. . . send check to Dan Martin" for the transportation of goods in interstate commerce from Deerfield, Illinois to Atlanta, Georgia, "*under direction and control of Ryder Truck Lines, Inc.*" (Emphasis supplied.) This lease clearly stated that, "the leased equipment under this agreement is *in the exclusive possession, control, and use of the authorized carrier Lessee* and that *the Lessee assumes full responsibility in respect to the equipment it is operating to the public, the shippers, and all regulatory bodies having jurisdiction.* It is agreed that Lessor will carry acceptable Public Liability and Property Damage Insurance. Lessor agrees to reimburse and otherwise indemnify Lessee for any and all losses sustained by Lessee resulting from the use of the aforesaid equipment." (Emphasis supplied.)

The worker's claim was filed against Ryder Truck Lines, Inc. and Hames Trucking Company and their respective insurers. The administrative law judge, hearing the case and based on the above leases, as well as other evidence, made a determination that the injuries sustained were accidental and covered by workers' compensation *while arising out of and in the course of his employment with Ryder Truck Lines, Inc.* and Hames Trucking Company.

On appeal to the full board and upon de novo consideration of all evidence the board determined, with one director dissenting, that "Hames Trucking Company neither had the right to nor exercised any control over claimant in reference to his trip back into Georgia. . ." The board also determined that the language of the trip lease refers to results to be accomplished and "were never understood to give Ryder the right to control claimant as to the time, manner, and method of his driving their trailer to Georgia." The board then concluded that "no employer-employee relation existed between claimant" and the two trucking concerns, and the claim was denied. On appeal to

the superior court the denial was affirmed. The majority affirms. To this I cannot agree for the following reasons.

1. Based upon the evidence and the law of Georgia with reference to employee status there is no doubt that the claimant was in the employ of Ryder Truck Lines, Inc. shown in the award and in the hearing since the truck was involved in interstate commerce subject to the laws and regulations of the Interstate Commerce Commission in effect on November 8, 1977. Neither the superior court nor the board was in error in denying the claim as to "Hames Trucking, Inc." (Hames Trucking Company) as this trucking concern hauls only exempt products and is, therefore, not subject to Interstate Commerce Commission regulations. See *Howard Sheppard, Inc. v. McGowan*, 137 Ga. App. 408, 410 (224 SE2d 65); *American Motorists Insurance Company v. Brown*, 128 Ga. App. 813 (198 SE2d 348); *Fidelity & Casualty Company of New York v. Windham*, 209 Ga. 592, 593 (74 SE2d 835); *Hodges v. Doctors Hospital*, 141 Ga. App. 649, 653 (234 SE2d 116); *Bibb Manufacturing Co. v. Martin*, 53 Ga. App. 137 (185 SE2d 137).

2. The trip lease prepared by Ryder Truck Lines, Inc. and introduced by it to define the relationship between the claimant and Ryder Truck Lines, Inc. shows unequivocally that the leased vehicle (tractor and trailer) was, "under direction and control of Ryder Truck Lines, Inc. . .," as the carrier from Deerfield, Illinois to Atlanta, Georgia. Not only was the tractor and trailer under Ryder's control, but the law and regulations as well as the contract gave it exclusive possession, control and use as the authorized carrier lessee which assumed full responsibility in respect to the equipment. It thus had the right to control the manner and means of the work performed by the claimant to such as extent to create an employer/employee relationship. See *Montgomery Trucking Company, Inc. v. Black*, 231 Ga. 211, 213 (200 SE2d 882); *Blair v. Smith*, 201 Ga. 747 (41 SE2d 133); *American Casualty Company v. Harris*, 96 Ga. App. 720 (101 SE2d 618); *Liberty Mutual Insurance Company v. Kinsey*, 65 Ga. App. 433 (16 SE2d 179); *Ratliff v. Liberty Mutual Insurance Company*, 149 Ga. App. 211, 212 (3) (253 SE2d

799); *Golosh v. Cherokee Cab Company*, 226 Ga. 636 (176 SE2d 925). The law requires and demands that the equipment engaged in interstate commerce be under the exclusive custody and control of the carrier. 49 USCA section 304 (since repealed in part October 17, 1978). Consequently, the claimant was the driver of the carrier, regardless of any arrangement that the carrier had with the lessor as to the equipment, payment of the driver or other indemnification agreement with respect to same. See *Dove v. National Freight, Inc.*, 138 Ga. App. 114, 116 (4) (225 SE2d 477); *T. G. Stegall Trucking Company v. Tower Lines, Inc.*, 135 Ga. App. 286, 287 (2) (217 SE2d 488). Compare *Mitchell v. Burden Brothers, Inc.*, 126 Ga. App. 75 (189 SE2d 909); *Farmers Mutual Exchange of Commerce, Inc. v. Sisk*, 131 Ga App. 206 (205 SE2d 438); *Flowers v. U.S.S. Agri-chemicals*, 139 Ga. App. 430 (228 SE2d 392).

The denial of the claim has been made on the erroneous legal theory that the claimant could not have been an employee of the carrier since the tractor was owned and operated by another leased to that carrier. By law the carrier has been *required to assume control of the manner, means and handling of this tractor trailer involved in interstate commerce.* The superior court, as well as the board, erred in determining there was no employee/employer relationship between the claimant and the carrier (Ryder Truck Lines, Inc.). *Barbree v. Shelby Mutual Insurance Company*, 105 Ga. App. 186, 188 (123 SE2d 905); *Miller v. Travelers Insurance Company*, 111 Ga. App. 245, 248 (141 SE2d 223); *Thomas v. Ford Motor Company*, 123 Ga. App. 512 (181 SE2d 874); *Fleming v. United States Fidelity & Guaranty Company*, 137 Ga. App. 492 (2) (224 SE2d 127).

I therefore respectfully dissent. I am authorized to state that Judge Banke joins in this dissent.